ADR and Federal Procurement

Presented by:

Beth Lagana

Interaction of Power, Rights, & Interests

- Power: Determine who is more Powerful
  - acts of aggression
  - withholding benefits from the relationship
- Rights: Determine Who is More Right
  - law or contract
  - seniority, reciprocity, fairness
- Interests: Reconcile Underlying Interest
  - needs, desires, concerns, fears

Avoidance, Violence, Litigation, Negotiation

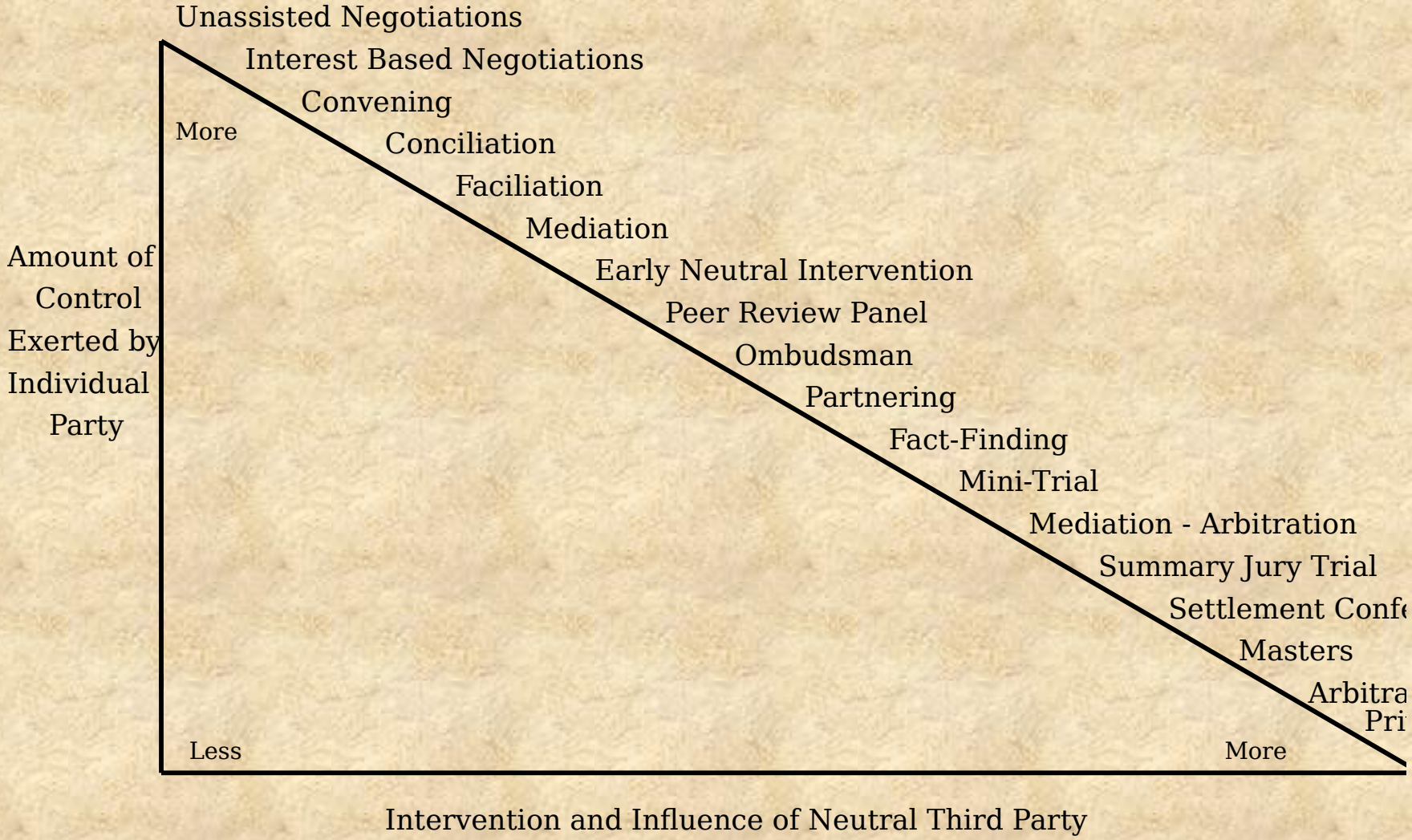
- Avoidance
  - fighting with a spouse who doesn't respond to you: you want to fight, but they won't say anything
- Violence
  - school children on the playground
- Litigation
  - divorce - get lawyers and you duke it out in court
- Negotiation
  - assisted or unassisted

Negotiation

- Various Environments
  - parties intend to work together afterward
  - parties have not had, nor intend future dealings
  - previous relationship will continue with some animosity and tension
- Various Goals
  - competitor
  - defender
  - problem solver
- Various Techniques
  - subtle messenger
  - user of time constraints
  - wolf in sheep's clothing
  - start high
- Principled Negotiation

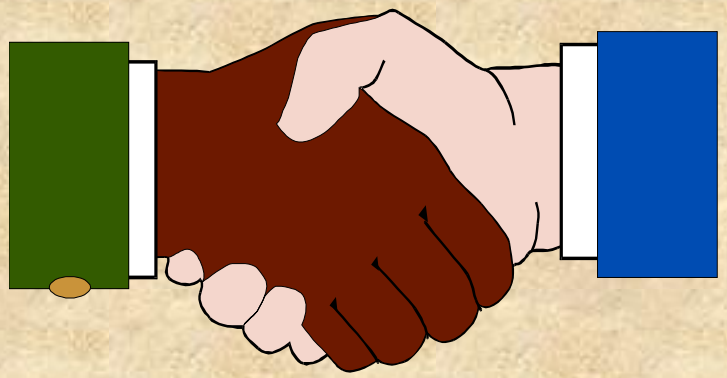
Principled Negotiation

- Interests
  - legal, short and long term, political, personal or emotional, timing conditions
- Options
  - possibilities
- Alternatives
  - BATNA
  - WATNA
- Legitimacy
  - objective criteria
- Commitments
  - intentions
- Communications
  - information flow
- Relationship
  - interaction


Unassisted Negotiations
Interest Based Negotiations
Convening
More
Conciliation
Faciliation
Mediation
Amount of Control Exerted by Individual Party
Early Neutral Intervention
Peer Review Panel
Ombudsman
Partnering
Fact-Finding
Mini-Trial
Mediation - Arbitration
Summary Jury Trial
Settlement Confe
Masters
Arbitra
Pri
Less
More
Intervention and Influence of Neutral Third Party

Benefits of ADR

- Has the potential to resolve disputes faster and at less cost
- Usually, the parties maintain more control over the process and the outcome
- Can provide a foundation for an improved relationship between the parties



Mediation

- Favored technique
- If no settlement, can continue formally
- Parties decide
- Useful in many arenas
- Generally involves a mediator structuring the environment to have principled negotiation
- Can be effective even when you say: “No way can these parties settle”